

# AGENDA



## BERKELEY CITY COUNCIL MEETING

TUESDAY, JANUARY 31, 2012

7:00 P.M.

COUNCIL CHAMBERS - 2134 MARTIN LUTHER KING JR. WAY

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO  
DISTRICT 2 – DARRYL MOORE  
DISTRICT 3 – MAX ANDERSON  
DISTRICT 4 – JESSE ARREGUIN

DISTRICT 5 – LAURIE CAPITELLI  
DISTRICT 6 – SUSAN WENGRAF  
DISTRICT 7 – KRISS WORTHINGTON  
DISTRICT 8 – GORDON WOZNAK

*This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, CMC, Acting City Clerk, 981-6900.*

*The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.*

## Preliminary Matters

### Roll Call:

**Ceremonial Matters:** *In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.*

**City Manager Comments:** *The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.*

**Public Comment on Non-Agenda Matters:** *Five persons selected by lottery will have two minutes each to address matters not on the Council agenda. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a name card to the City Clerk in person at the meeting location and prior to commencement of that meeting. Five cards will be drawn by the City Clerk to determine the speakers who will be allowed to comment during the first round of public comment on non-agenda matters. The remainder of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Name cards are not required for this second round of public comment on non-agenda matters.*

**Public Comment on Consent Calendar and Information Items Only:** *The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Up to three speakers will be entitled to two minutes each to speak in opposition to or support of a Consent Calendar Item. The Presiding Officer will ask additional persons in the audience to stand to demonstrate their respective opposition to or support of the item.*

*In the event that there are more than three persons wishing to speak either in opposition to or support of a "Consent" item, the Presiding Officer will move the item to the beginning of the Action Calendar. Prior to moving the item, the Presiding Officer will fully inform those persons in the audience of this process.*

*Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.*

## **Consent Calendar**

*The Council will first determine whether to move items on the agenda for action or "Information" to the "Consent Calendar", or move "Consent Calendar" items to action. Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".*

*After hearing from public speakers regarding items remaining on the Consent Calendar, any Council Member may move any Information or Consent item to "Action", however no additional items can be moved onto the Consent Calendar at that point. Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.*

*For items removed from the Consent Calendar to the Action Calendar for additional public comment, at the time the matter is taken up during the Action Calendar, public comment will be limited to persons who have not previously addressed that item during the Consent Calendar related public comment period.*

- 1. Proposed Amendments to Claim/Refund Ordinance, BMC Chapter 7.20**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,222-N.S. amending Berkeley Municipal Code Sections 7.20.030 and 7.20.040 to require full verification of refund claims and ensure that service providers may only claim refunds after providing them to customers, amending Section 7.20.090 to conform to state law, and repealing Sections 7.20.045, 7.20.047, 7.20.048, 7.20.070 and 7.20.080 as obsolete.  
**First Reading Vote:** All Ayes  
**Financial Implications:** Unknown  
Contact: Zach Cowan, City Attorney, 981-6950
- 2. Amending the Attendance Reporting Period for Commissions that Meet Quarterly, BMC Section 3.02.020**  
**From: City Manager**  
**Recommendation:** Adopt second reading of Ordinance No. 7,223-N.S. amending Berkeley Municipal Code Section 3.02.020 to change the attendance reporting period for commissions that meet quarterly.  
**First Reading Vote:** All Ayes  
**Financial Implications:** None  
Contact: Mark Numainville, Acting City Clerk, 981-6900

## Consent Calendar

- 3. Extension of Moratorium on Charging for Parking at Meters on Adeline Street Between Woolsey Street and Alcatraz Avenue**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution that extends the moratorium on charging for parking at meters on Adeline Street between Woolsey Street and Alcatraz Avenue.  
**Financial Implications:** Approximately \$14,000  
Contact: Michael Caplan, Economic Development, 981-7530
- 4. Formal Bid Solicitation and Request for Proposal Scheduled For Possible Issuance in the Next 30 Days**  
**From: City Manager**  
**Recommendation:** Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.  
**Financial Implications:** Department of Boating and Waterway Fund - \$160,000  
Contact: Robert Hicks, Finance, 981-7300
- 5. Amendment to Appropriations Limit for FY 2012**  
**From: City Manager**  
**Recommendation:** Adopt an amendment to Resolution No. 65,342-N.S. to increase the appropriations limit to \$190,338,719, from \$177,513,623 for FY 2012 pursuant to Article XIII B of the Constitution of the State of California based on the calculations for the appropriations limit.  
**Financial Implications:** None  
Contact: Robert Hicks, Finance, 981-7300
- 6. Adopting the Operative Principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and Adding Chapter 13.20 to the Berkeley Municipal Code**  
**From: City Manager**  
**Recommendation:** Adopt first reading of an Ordinance adding Chapter 13.20 to the Berkeley Municipal Code to adopt the operative principles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.  
**Financial Implications:** None  
Contact: Jane Micallef, Health Services, 981-7000
- 7. Contract No. 7229 Amendment: Preferred Alliance, Inc. for Drug and Alcohol Testing Services**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the Interim City Manager to amend the existing Contract No. 7229 with Preferred Alliance, Inc., a Drug and Alcohol Testing Administrator, by increasing expenditure authority in an amount not to exceed \$17,731 for a total contract amount of \$85,997 through December 31, 2012.  
**Financial Implications:** Various Funds - \$17,731  
Contact: David Hodgkins, Human Resources, 981-6800

## Consent Calendar

8. **Contract No. 8485 Amendment: Fine Line Construction for Seismic Retrofit of the Facilities Maintenance Building**  
**From: City Manager**  
**Recommendation:** Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 8485 with Fine Line Construction (FLC) for additional services on the Facilities Maintenance Building (FMB) in an amount of \$200,000 for a total revised contract of \$4,340,000.  
**Financial Implications:** Various Funds - \$200,000  
Contact: Andrew Clough, Public Works, 981-6300
9. **Designation of February 2012 as National Teen Dating Violence Awareness and Prevention Month**  
**From: Peace and Justice Commission**  
**Recommendation:** Adopt a Resolution designating February 2012 as National Teen Dating Violence Awareness and Prevention Month.  
**Financial Implications:** None  
Contact: Eric Brenman, Commission Secretary, 981-5114
10. **Recognizing the Sacrifice by Tibetans of Self-Immolation in Reaction to China's Extreme Repression of the Tibetan People and Nation**  
**From: Peace and Justice Commission**  
**Recommendation:** Adopt a Resolution recognizing the Berkeley Tibetan-American community and the immeasurable sacrifice of those Tibetans protesting China's extreme repression of the Tibetan people and nation by self-immolation and urging the Obama administration to take such actions, including but not limited to calling on China to end its extreme security measures of Tibetan monasteries and adjacent communities.  
**Financial Implications:** None  
Contact: Eric Brenman, Commission Secretary, 981-5114

## Council Consent Items

11. **Referral to City Manager: Responsible Banking Policy**  
**From: Councilmembers Moore and Arreguin**  
**Recommendation:** Request that the City Manager evaluate and report back to the City Council no later than May 1, 2012 regarding:
1. The fiscal and operational impacts of not renewing Contract No. 6547 with Wells Fargo Bank and contracting with an alternative bank, including but not limited to Community Banks, membership-based Credit Unions or Community Development Financial Institutions (CDFI) for city banking services.
  2. Evaluate and present to the City Council information on alternatives to banking with Wells Fargo, including but not limited to Community Banks, membership-based Credit Unions or Community Development Financial Institutions (CDFI), and ensure that any new banking contract is with an entity that is that is capable of fully meeting the City's banking needs.

## Council Consent Items

3. Review City banking and investment practices to ensure that public funds are invested in responsible financial institutions that support our community and recommend a city banking policy that gives preference to banks that support community reinvestment goals such as stabilizing the housing market, loans to local homeowners and businesses, the establishment of local branches in low income communities, and local employment opportunities.

**Financial Implications:** Unknown

Contact: Darryl Moore, Councilmember, District 2, 981-7120

**12. Tow Away Zones on MLK JR Way between Berkeley Way and Hearst Avenue**

**From: Councilmember Arreguin**

**Recommendation:** Request that the City Manager consider possible parking and traffic configurations on the MLK block between University and Hearst Avenues that eliminate the need for commute hour Tow Away Zones.

**Financial Implications:** Unknown

Contact: Jesse Arreguin, Councilmember, District 4, 981-7140

**13. Endorsing NAACP Coordinated Freedom Pledge for Voting Rights**

**From: Councilmembers Worthington, Anderson and Moore**

**Recommendation:** Adopt a Resolution endorsing the Freedom Pledge for Voting Rights to protect voting rights for millions of Americans across the United States.

**Financial Implications:** None

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**14. Smoke-Free Housing in Berkeley**

**From: Councilmembers Worthington and Anderson**

**Recommendation:** Refer to the Community Health Commission and Rent Stabilization Board to analyze a potential Smoke-Free Housing Ordinance in Berkeley.

**Financial Implications:** None

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**15. 27th Anniversary Jewish Music Festival - March 22, 2012 as Berkeley Jewish Music and Heritage Day**

**From: Councilmembers Worthington and Wengraf**

**Recommendation:** Adopt a proclamation that March 22, 2012 is Berkeley Jewish Music and Heritage Day as the 27th Anniversary Jewish Music Festival.

**Financial Implications:** None

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

**16. Endorse the California Cancer Research Act**

**From: Councilmembers Worthington and Anderson**

**Recommendation:** Endorse the California Cancer Research Act on the June 2012 ballot.

**Financial Implications:** None

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

## Council Consent Items

- 17. Support HR 3200: The Local Flexibility for Transit Assistance Act**  
**From: Councilmember Worthington**  
**Recommendation:** Send a letter in support of HR 3200 to Congresswoman Barbara Lee.  
**Financial Implications:** None  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
- 18. City Sponsorship of the 11<sup>th</sup> Annual Perspectives Multicultural Showcase**  
**From: Councilmember Worthington**  
**Recommendation:** Adopt a Resolution officially sponsoring the 11th Annual Perspectives Multicultural Showcase.  
**Financial Implications:** None  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
- 19. Perspectives Multicultural Showcase: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds**  
**From: Councilmember Worthington**  
**Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$1000 per Councilmember to the Perspectives Multicultural Showcase with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Worthington and any other Councilmembers who would like to contribute.  
**Financial Implications:** Councilmember's Discretionary Fund - \$1000  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170
- 20. Protect Consumers from Cell Phone Theft**  
**From: Councilmembers Worthington and Wozniak**  
**Recommendation:** Send a letter to CTIA (The Wireless Association) to consider crosschecking the phone's serial number to block stolen phones.  
**Financial Implications:** Minimal  
Contact: Kriss Worthington, Councilmember, District 7, 981-7170

## Action Calendar

*After the initial ten minutes of public comment on non-agenda items and public comment and action on consent items, the public may comment on each remaining item listed on the agenda for action as the item is taken up. Where an item was moved from the Consent Calendar to Action no speaker who has already spoken on that item would be entitled to speak to that item again.*

*The Presiding Officer will request that persons wishing to speak line up at the podium to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.*

## Action Calendar – Old Business

21. **City of Berkeley Policy for Naming and Renaming Public Facilities** (*Continued from January 17, 2012*)  
**From: Mayor Bates and Councilmembers Maio and Worthington**  
**Recommendation:** Review the current proposed naming policy and background materials, comment, and adopt a formal policy for the naming and renaming of public facilities.  
**Financial Implications:** Unknown  
Contact: Tom Bates, Mayor, 981-7100
22. **Expenditure of Measure GG Tax Revenue** (*Continued from January 17, 2012*)
- a. **From: Disaster and Fire Safety Commission**  
**Recommendation:** Task the City Manager, acting through the City's Budget and Fire Departments, to develop a budget for the expenditure of all funds collected under the tax authorized by Berkeley ballot Measure GG. To the extent that funds are to be reserved for unexpected contingencies, any reserves should be identified by the category of Municipal Code Sections 7.81.010 D 1. - 4. for which the funds are to be held in reserve and the nature of the contingencies justifying those reserves should be spelled out.  
**Financial Implications:** None  
Contact: Gil Dong, Commission Secretary, 981-3473
- b. **From: City Manager**  
**Recommendation:** Accept the budget and expenditure detail in the City Manager's report in response to the Disaster and Fire Safety Commission's (DFSC) request for a projected budget, and update as necessary, for the expenditure of funds collected under the Fire Protection and Emergency Response and Preparedness tax (Measure GG) and for staff to return to Council in January 2013 as part of the Fiscal Year 2014-15 budget process to recommend how the FY 14 funds should be allocated.  
**Financial Implications:** None  
Contact: Debra Pryor, Fire, 981-3473

## Action Calendar – New Business

23. **Legislation Related to "Mini-dorms" and Amending the Berkeley Municipal Code**  
**From: City Manager**  
**Recommendation:**
1. Adopt first reading of an Ordinance amending Berkeley Municipal Code section 14.72.080.C limiting participation in residential preferential parking program for residents of new group living accommodations or, in the R-2 and R-2A zoning districts, for residents of dwelling units with more than 5 bedrooms to which bedrooms are added after January 1, 2012;
  2. Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.48 to extend the second response period for loud and unruly gatherings from 120 days to 180 days;
  3. Adopt first reading of an Ordinance enacting a new Chapter 13.42 to the Berkeley Municipal Code defining and establishing operating standards for "Mini-dorms"; and

## **Action Calendar – New Business**

4. Review and comment on proposed amendments to the Zoning Ordinance that would grant the City discretionary authority over addition of bedrooms to dwelling units that already have five or more bedrooms, in the R-2 and R-2A districts.

**Financial Implications:** Unknown

Contact: Zach Cowan, City Attorney, 981-6950

### **24. 2133 Parker Street - Determination re: Public Nuisance**

**From: City Manager**

**Recommendation:**

1. Adopt a Resolution declaring 2133 Parker Street a public nuisance and specifying remedies; OR
2. Adopt a Resolution determining that Parker Street is not a public nuisance, and taking no further action.

**Financial Implications:** None

Contact: Wendy Cosin, Planning and Development, 981-7400

## **Action Calendar – Council Items**

### **25. Adopt Expanded Single Use Plastic Bag Ban/Paper Bag Fee Ordinance**

**From: Councilmember Worthington**

**Recommendation:** Adopt an Environmentally Preferable City Single Use Plastic Bag Ban/Paper Bag Fee Ordinance, based on the Stopwaste.org EIR.

**Financial Implications:** Minimal

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

## **Information Reports**

### **26. Fiscal Year 2011 Year End Review**

**From: City Manager**

Contact: Teresa Berkeley-Simmons, Budget Manager, 981-7000

### **27. Status of Audit Recommendations-1) Over \$38,000 in Duplicate & Over Payments Recovered; 2) Lack of Support for Payroll Adjusting Journal Entries; and 3) Public Works Grants Audit**

**From: City Manager**

Contact: Robert Hicks, Finance, 981-7300

### **28. Strategy for Discouraging the Poaching of Recyclables - Update**

**From: City Manager**

Contact: Andrew Clough, Public Works, 981-6300

## **Public Comment – Including Items Not Listed on the Agenda –**

## **Adjournment in Memory of:**

- George Livingston, former mayor of the City of Richmond, California



**NOTICE CONCERNING YOUR LEGAL RIGHTS:** *If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply:*

1) *No lawsuit challenging a City decision to deny (Code Civ. Proc., 1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred.*

2) *In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.*

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at <http://www.ci.berkeley.ca.us/video> and KPFB Radio 89.3.

Archived indexed video streams are available at <http://www.ci.berkeley.ca.us/citycouncil>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of the civic center located at 2180 Milvia Street as well as posted on the City's website at <http://www.cityofberkeley.info>.

Agendas and agenda reports may be accessed via the Internet at <http://www.ci.berkeley.ca.us/citycouncil> and may be read at reference desks at the following locations:

City Clerk Department  
2180 Milvia Street  
Tel: 510-981-6900

TDD: 510-981-6903

Fax: 510-981-6901

Email: [clerk@ci.berkeley.ca.us](mailto:clerk@ci.berkeley.ca.us)

Libraries:

Main - 2090 Kittredge Street

West Branch – 1125 University

South Branch – 1901 Russell

**COMMUNICATION ACCESS INFORMATION:**

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6346(V) or 981-7075 (TDD) at least three business days before the meeting date.

Please refrain from wearing scented products to this meeting.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

~~~~~

***I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on January 19, 2012.***

A handwritten signature in black ink, appearing to read 'Mark Numainville', written in a cursive style.

Mark Numainville, CMC, Acting City Clerk

## **Communications**

*Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record.*

### **Pension Concerns**

1. Paola Laverde

### **Safeway on College Avenue**

2. John Chalik

### **Bicyclists & Pedestrian Safety Issues**

3. Anne Whyte